son, although she failed to appear and make defense. The defense of the executor, her codefendant, was not personal to him. It went to the foundation of the appellant's right to recover upon the case stated.'

So, in the case in hand, the demurrers put in issue the existence of the merchanic's lien, and the dismissal of the original and amended bills as to both defendants was a corollary to sustaining the demurrers, no matter by which defendant they may have been interposed.

For these reasons, we are of opinion to affirm the decree.

Affirmed.

DRAKE *v.* BLYTHE *et al.*

March 12, 1908.

[60 S. E. 632.]

Wills—Construction—Joint Tenancy—Survivorship.—Code 1849, c. 116, § 19, and Code 1887, § 2431 [Code 1904, § 2431], provide that the provision abolishing survivorship between joint tenants shall not apply to an estate devised to persons in their own right, where it appears from the instrument that it was intended that the part of the one dying should then belong to the others. A will devised a 70-acre farm, which constituted the home of testator, his wife, and two unmarried daughters, in its entirety to his wife for life, at her death to the daughters and their heirs, and if they should die without heirs to a grandson. The widow died after testator and after one of the daughters. Held that, under the statute, the interest of such daughter passed to the surviving sister, and not to the grandson; the will disclosing an intent to perpetuate the home for the benefit of his wife and daughters.

Appeal from Circuit Court, Southampton County.

Bill by Junius W. Drake against Caroline F. Blythe and others. From the decree, complainant appeals. Affirmed.

John N. Sebrell, Jr., for appellant.

W. J. Sebrell, for appellees.

WHITTLE, J. This case (a suit in equity for partition) involves the construction of the will of Elijah Joyner, deceased, which is as follows:

"October 15, 1869. Eye give to my wife all my estate her life and at her deth eye give to my two daughters Eveline M. Joyner and Caroline F. Joyner to them and there heirs forever and if they dye with douth are eye give it to son Junius W. Joyner, the son of son my daughter Mary Jane Drake Eye give to my daughter Mary Jane Drake five dollars."

The testator was survived by his wife, Patsy Joyner (who died a few years after her husband), and three daughters, Eveline M. (who died in the year 1905, unmarried and without issue), Caroline F. (who intermarried with Joseph Blythe, of which marriage there is a son, Lucius Blythe, now living), and Mary Jane Drake; also her son, Junius W. Drake (sometimes called Junius W. Joyner).

Upon the death of Eveline M. Joyner, Junius W. Drake asserted title of half of the estate; and from a decree disallowing his pretension this appeal was granted.

It is conceded that at the death of the widow the two daughters, Eveline and Caroline, took under the will a defeasible fee in the 70 acres, which formed practically all the estate, as joint tenants; and at common law, on the death of Eveline without issue, her moiety would have passed to Caroline by right of survivorship. The appellant, however, contends that, survivorship between joint tenants having been abolished in Virginia by statute (Code 1849, c. 116, §18), upon a proper construction of the will, at the death of Eveline without issue, he took one-half of the estate.

It will be remembered that the act abolishing survivorship contains the exception that it "shall not apply * * * to an estate conveyed or devised to persons in their own right, where it manifestly appears from the tenor of the instrument that it was intended the part of one dying should then belong to the others." Code 1894, c. 116, § 19; Code 1887, § 2431; Code 1904, § 2431.

At the date of the will the little farm in controversy was the home of the testator, his wife, and two unmarried daughters, Eveline and Caroline. Under these circumstances, it was the natural desire of the testator to perpetuate this home for the benefit of his wife, who was shortly to take his place as the natural head of the family, for her life, with remainder to the next objects of his solicitude, his two unmarried daughters for their joint lives; and, if both should die without issue, then to the ultimate object of his bounty, his kinsman in the next degree, the grandson, son of his remaining daughter, Mrs. Drake, who, for some unexplained reason, he did not wish to participate in his estate.

The testator, though an illiterate man, has expressed these dominant purposes of his mind in unmistakable language. So we find that the property is given in its entirety to the wife for life; and at her death the remainder in the identical subject, without change or diminution, is given to his two daughters, Eveline and Caroline, to them and their heirs, forever; if they should die without heirs, and only upon that contingency, "it" (the entire farm, and not part of it) shall devolve upon the appellant.

It calls for no stretch of the language of the will, therefore, to hold that, in the words of the statute, "it manifestly appears from the tenor of the instrument that it was intended that the part of

the one dying (Eveline) should then belong to the other" (Caroline).

For these reasons, the decree of the circuit court, which reaches the result indicated, must be affirmed.

Affirmed.

FENTRESS v. POCAHONTAS FOWLING CLUB.

March 12, 1908.

[60 S. E. 633.]

1. **Ejectment—Trial—Questions for Jury—Conflict of Grants.**—In an action of ejectment, where the parties claim under different grants from the commonwealth, if the junior grant covers land embraced by the senior grant, there is a conflict in the grants to the extent that the same land is covered by both; but it is not a conflict of evidence, nor do the grants contradict each other.

2. **Same—Construction of Grants.**—The construction and legal effect of grants of land from the commonwealth are questions for the court, whether the case is left to a jury, or a jury is waived and matters of law and fact submitted to the court, or the case is withdrawn from the jury by a demurrer to the evidence.

3. **Same—Location of Grant.**—In an action of ejectment, where the parties claim under different grants from the commonwealth, questions as to the true location of the grant and as to the application of either grant to its proper subject-matter are not questions of construction, but of location, to be determined by the jury with the aid of extrinsic evidence.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 17, Ejectment, § 308.]

4. **Same—Effect of Demurrer to Evidence.**—A demurrer to evidence, in an action of ejectment, does not exclude from the consideration of the court the title papers of the demurrant.

5. **Appeal—Reservation of Questions in Trial Court—Necessity of Bill of Exceptions.**—Where no bill of exceptions taken to a ruling complained of, its assignment as error need not be considered on appeal.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 2, Appeal and Error, §§ 1432-1468.]

6. **Boundaries—Ascertainment—Courses and Distances Yield to Natural Objects.**—In ascertaining the boundaries of surveys or grants, wherever natural or permanent objects are called for, they control, and courses and distances must yield.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 8, Boundaries, § 12.]